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Testimony of Rep. Barbara Boxer before the Armed Service Subcommitties on Seapower and Strategic and Critical Materials and Investigations Hearing on Post-Employment Conflict of Interest by government employees

Mister Chairman,

I would like to thank you for offering me the opportunity to testify today on the serious conflict of interest problem known as the "revolving door."Simply described "revolving door" is the practice of government employees resigning and going to work for a government contractor he or she directly supervised.

Before World War II, most of our country's military equipment was produced at government facilities or armories. When this proved insufficient, private peacetime industries were adapted for military production. After World War II, the United States decided to maintain a defense/industrial base which, in the event of war or imminent danger, could rapidly escalate military production. This led to a policy which has insulated the defense industries from normal impacts of the private sector free-market industries.

In the free market, most buyer-seller relationships are, in a sense, adversarial. The seller tries to get the highest price for his goods, and the buyer tries to obtain these goods at the lowest possible price. After World War2

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the Department of Defense-the single largest purchaser of goods and services in the world-and the private corporations that supply it, developed a relationship of interdependance. DOD relies on a small number of giant contractors most of whom contract primarily with the Pentagon in many cases. The lack of true competition has led to a sacrifice of efficiency and abuse. "Revolving door" has occured primarily because of this blurring between buyer and seller.

Since 1969, when legislation, sponsored by Sen. Proxmire first required former Department of Defense personnel to identify their new corporate employers, the numbers of former Pentagon officials hired by defense contractors has risen. Between 1969-1973, 1406 DOD officials and military personnel left the government and went to work in the defense industry. From 1980-1983, over 2000 retired high ranking officers went to work for defense contractors. As the "revolving door" phenomenon has become more widespread, with the interests of the Department of Defense and the private corporations merging, the taxpayer has lost out. Taxpayers have lost the watchdogging they deserve over government contracts.

The "revolving door" is a classic example of a conflict of interest situation. The New York City Bar Association defined conflict of interest for government officials as, "...anytime when the interests of the government official (and of the public) in the proper

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administration of his office and the interests in his own private economic affairs clash." When people who make decisions affecting the flow of billions of dollars in public funds are, at the same time, affecting their personal economic future, a conflict of interest exists.

In all the testimony that this committee will hear today concerning the "revolving door", one thing is clear; the integrity of individual procurement officials is not the issue in this legislation. What is important is that we change the institutional system which has weakened the ability to watchdog for the public.

Those who argue against legislation to close the "revolving door" often cite the fact that formal job negotiations between a contractor and a federal employee are forbidden by the rules contained in the "Standards of Conduct" for government employees. However, during recent hearings in the Energy and Commerce Committee, it was discovered that the Chairman of the Board of General Dynamics, David Lewis, had offered future employment to an assistant Navy Secretary. At the time, the Secretary was overseeing General Dynamic's shipbuilding contracts for the Navy. Within months of these conversations, he left the Navy and took a job with General Dynamics as a vice president and director of the company and this is not unusual

In most cases a conflict of interest may exist even without a formal job offer from the contractor under

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supervision. The simple knowledge that a contractor can hire a government employee at a job that pays more than he gets now, sets up the potential conflict which all too often becomes real. On the other hand, if an employee knows that the contractors they deal with cannot offer them jobs, no matter what policy decisions they make, the conflict is eliminated and the taxpayers are protected.

Existing law in this area is ineffective. Military personnel are prohibited from selling to any DOD agency for 3 years after their retirement and supposedly prohibited from selling to their former service for life. In 1978, Congress passed the Ethics In Government Act (18/USC/207), which was intended to reform and strengthen conflict of interest rules by prohibiting retired government employees form personally representing a contractor before their former agency for 1 year. The "selling" provisions for former military personnel, the Proxmire reporting regulations, and the limits established in the Ethics in Government Act are the only laws affecting post-employment activities for government officials.

None of these post-employment restrictions have done much to close the revolving door. The "selling" prohibitions are ineffective for three reasons: They are easy to circumvent, difficult to interpret or enforce and don't really address the revolving door problem. Most of the positions that are offered to former military office

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are such that they may never have to formally appear before any agency or actively sell to their former service. Moreover, these provisions are so narrowly drawn, and open to such wide interpretation, that in 1979,the General Accounting Office issued a report citing at least 19 clear cut violations of the selling provisions and the Justice Department declined to pursue them. Finally, the selling provisions have little to do with the central problem of the "revolving door", since the prospect of a future job and continued economic stability is enough to create an environment in which some officials could be tempted or corrupted.

One of the most frequent comments made about the "revolving door"and the influence of defense contractors on the procurement process is that these are not real problems, but rather problems of public perception. There is a perception problem created by the "revolving door" that persuades the American people that the procurement system is corrupt and that contractors have too much influence. However, this perception has its roots in reality. "Revolving door" corrupts the procurement system.

In October 1982, the Office of Governement Ethics visited Kirtland Air Force Base in Albuquerque, New Mexico, to review their ethics program. During the course of an interview with Col. Jack Finder, a member of the staff Judge Advocate's office, Col. Finder stated,

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"...the head of the Air Force Plant representative's Office at Northrup on Friday could become the Northrup Vice President for Ouality Assurance on Monday and immediately AFPRO employee morale is destroyed. AFPRO employees must deal with their former employee daily on many matters and feel betrayed that the contractor now has all the inside knowledge of how the AFPRO operates." Col. Finder continued by saying, "one of the major problems that he is faced with is post-employment practices of government personnel. The Ethics in Government Act does not deter the types of post-employment problems typical of the Department of Defense." He also commented that "...Employees openly discuss what the former employee has done over the past few years for the contractor in order to obtain the new job, and wonder why they themselves should be so ethical."

Col. finder is not the only military official to call attention to the problem of the "revolving door." In 1982, Capt. Jeffery Rohm, a member of the staff judge Advocate's office at the Pratt & Whitney Jet Engine Plant in West Palm Beach, Florida filed a formal suggesiton with the Air Force to the effect that key Air Force personnel with cognizance over a contractor should be barred from employment with that contractor for 2 years, after their government service terminates, from employment with that contractor. Capt. Rohm stated that "...key government employees and military members, in sensitive positions

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in relation to DOD contractors, often go right to work for a contractor over which they had cognizance in their government capacity. Recent history is replete with instances of Air Force Plant representatives going directly to work for the contractor over which they had contract administration cognizance." The Captain concludes by saying, "It is incongruous to disallow Air Force Plant Representative Office employees from having free donuts at a contractor conference because of influence and appearances, yet to allow an Air Force Plant Representative to take a job with a contractor over which he has just had administrative cognizance."

The federal government procures goods and services worth hundreds of billions of dollars each year. We now have, for the first time, evidence to show that the "revolving door" practice causes government employees to question their own ethics. Col. Finder's remarks suggest a tension-filled work atmosphere with goverment employees questioning their own and other employee's motives. It is reasonable to assume that experience has taught them that the way to get a lucrative job is to go along with the contractor's wishes. Capt. Rohm's statement suggests a direct path that employees can take from government service to contractor employment. He also exposes a system of rules which are more concerned with donuts than with post-government employment and is not very effective in either situation.

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To pass legislation outlawing revolving door is a positive step that frees the employees from unnecessary pressure and allows them to do their jobs without having to face conflicts every time they turn around. Post-employment restrictions have often been interpreted to have a negative effect on government workers. I believe that just the opposite is true. If we pass thoughtful legislation that is focused and enforceable, we will ease the pressure on government workers and lift morale.

Now that I have outlined the problem let me propose a solution. I have introduced legislation, HR 1201, that has strong bi-partisan support, and is designed to close the "revolving door." This legislation currently has 42 cosponsors including Reps. Porter, Ridge, Kolbe as well as Reps. Levine, Bedell, Owens and Mitchell. It has been introduced in the Senate by Sens. Pryor, Grassley, Harkin, Gore and Simon.

HR 1201 is unique. My bill simply says that any contractor that does business with the government agrees not to hire former government employees or retired military officers who had direct contact with that contractor. The prohibition would be for five years. A number of attempts have been made to place restrictions or criminal sanctions on employees. This approach has many problems and has not generated the support needed for passage.

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I have exchanged communication with the Inspector General of the Department of Defense on this subject. His comments confirm how difficult criminal sanctions are to enforce. He wrote,"...the record shows that the use of criminal statutes is not appropriate for solving most post-employment conflict of interest problems...a total of one conviction of a DOD employee has been obtained under the post-employment provisons of the Ethics in Government Act. It is our general opinion that such cases do not often receive serious consideration by Federal prosecutors."

HR 1201 places no restrictions or sanctions on government employees. Rather, the burden of this legislation falls on the contractors who I believe are the source of the conflict of interest. My bill would require all contractors who do government work to agree not to hire any former government employee who had direct, substantive contact with them. If there is a violation of the statute, financial sanctions would be imposed on the contractor not the employee. The remedies in this bill are civil rather than criminal. Damages to be collected would be contract damages, which would be collected by existing mechanisms. This bill creates no new bureacracy or paper work.

°HR 1201 is drawn with a very narrow focus. It only applies to government employees who have had "significant" responsibilities for a government procurement function

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with specific contractors. It is aimed only at those who make significant decisions about a contract or weapons system's performance and sign off on contract provisions.

HR 1201 is also unique in another way: it requires all government contractors to issue a disclosure statement identifying any former government employee, or retired or separated military officer, hired within the last five years. They must also identify the responsibililties of the employee in their former government job and in their company.

This provision is vital to closing the "revolving door." We know about the "revolving door" in the Department of Defense only because of the Proxmire reporting requirement. There is no such requirement for any other agency of the federal government. This disclosure provision would bring the light of day to all government agencies and would enable Congress to find out how much influence contractors have throughout the government.

HR 1201 is enforceable. In a letter to me, the Inspector General of the Department of Defense, Joseph Sherick, stated that this bill"...treats conflict of interest issue as a contractual matter and applies the contractual remedy of liquidated damages. In my opinion, this approach is more likely to be effective in discouraging switching sides since it hits the contractor where it hurts--his pocketbook. This can be far more

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effective weapon than the criminal sanctions in current law which are rarely employed."

Some critics of "revolving door" legislation suggest that this type of bill could discourage people in the private sector from moving into government, making top-level government positions harder to fill.

Nothing could be farther from the truth. There are approximately 600 major contractors and over 150,000 subcontractors in the Department of Defense alone and any one of those ,excluding the one the employee supervised, could hire a former officer or employee. If military officers have developed skills and expertise in the aerospace industry while supervising a contract on the B-1 bomber for Rockwell, these officers could not be hired by Rockwell. However, Boeing, MacDonald Douglas, Lockheed, General Dynamics, United Technologies or any other company would be perfectly free to offer them a job.

The Chief Executive Officer of Martin Marietta, Thomas Pownell stated in testimony in March of this year before a Senate Armed Services subcommittee that, "The person that we are seeking has infinite opportunity. He or she can go to work for a wide range of companies across the whole country, not only in defense but in a lot of places. They are very talented people. They are not desparate for jobs."

Preventing specific contractors from hiring specific individuals is neither unreasonable nor draconian.

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It is eminently fair. What would not be fair would be to continue a practice which allows employees to come into government, develop skills and expertise and then use their position to find themselves lucrative jobs with a minimum of inconvienience. It is not fair to the American taxpayers who must subsidize inept management, lax oversight, production delays or slippage and procurement errors, all of which have direct connections to the revolving door problem.

This legislative approach has been criticized by the Department of Defense for a presumed negative impact on low level government employees. Not only does HR 1201 leave low-level employees alone, it has been endorsed by the American Federation of Government Employees, the International Association of Machinists and Aerospace Workers, and the Federal Managers Association, the very unions that represent the workers DOD refers to. These unions believe the revolving door practice is bad for their employees and for the nation. Their endorsement is a clear signal that this legislation is acceptable and workable and I would like to thank them for their support and encouragement.

The time has come to restore an arms-length distance between government and government contractors. The ease with which the "revolving door" operates has created an incestuous situation in which the line between buyer and seller has been blurred. We do not have the right,nor is

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it necessary or acceptable, to try and ban government employees from working in the private sector. That is unreasonable and is not my intent. But we do have the right and the obligation to excersize constitutionally mandated oversight and correct possible abuses of taxpayers money whereever possible.

My legislation is narrow in its scope and strikes a middle ground on this issue. It is not an outright ban nor is it simply an amplification of existing non-effective reporting requirements. It is enforceable and its approach enjoys bi-partisan support.

I thank both committee chairmen, my colleagues Congressman Nichols and Congressman Bennett for their interest and concern in this matter. I am sure that by the end of this hearing you will be as convinced as I am that this is a problem that can be solved in a manner that is fair to all concerned.

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